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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,926	03/31/2004	Andy Schwammberger	52318/TJD/M881	7919

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CHRISTIE, PARKER & HALE, LLP
P.O. BOX 7068
PASADENA, CA 91109-7068

EXAMINER

SHAFFER, RICHARD R

ART UNIT	PAPER NUMBER
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3733

DATE MAILED: 08/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/814,926	Applicant(s) SCHWAMMBERGER ET AL.	
	Examiner Richard R. Shaffer	Art Unit 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 35-64 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 35-64 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

The amendment to the title filed on June 12th, 2006 is acknowledged by the examiner and is accepted. The corresponding objections are hereby withdrawn.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 35-64 are rejected under 35 U.S.C. 102(b) as being anticipated by Hearn (US Patent Application Publication 2002/0143336).

Hearn discloses a system made of (Page 2, [0029]) bioresorbable materials or titanium comprising a main plate (12, 212); a spatially offset plate-shaped outrigger (14, 214) which can be flexed, bent (like all materials, even glass if heated), and cut; the outrigger has a plurality of holes (28, 228) to receive screws (42a, 242); the outrigger is a perforated (because of the “ring” holes 28, 228) as well as a grid-like (holes are lined up along a single axis) plate; **[First Interpretation]** the outrigger (14) has a ring-like fastening section (36); an elongate flexible (bendable) connection pin {*Definition of pin: A short, straight, stiff piece of wire*} (37,39 located on 16); the main plate (12) has at least one hole (34, 38) that extends parallel to the plane defined by the main plate for accepting the flexible connection element; the connection pin hooks the main plate with the looped end (**Figure 4**) while passing through connection elements (37, 39); the main

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plate and outrigger can be symmetrically positioned along the longitudinal axis of the main plate if they are merely rotated 180 degrees; the outrigger and main plate while connected by the connection pin are firmly held and can be handled as a single unit; the outrigger has a base shape sufficiently large to for the closures of the sternum; **[Second Interpretation]** the flexible connection element (232) is in one piece with the outrigger (214) and are thus unreleasably connected; the outrigger and main plate can be incrementally offset spatially; the main plate and outrigger have hooks (276); **[Third Interpretation]** main plate (30) has a larger base area than outrigger (32) in **Figure 6**; **[Fourth Interpretation]** **Figure 12** shows at least 5 passages for receiving fastening elements in the outrigger (14).

Hearn further discloses (**Page 4, [0044]**) that any number and combination of attachment members, such as hooks and bone screws, and release members, such as pins, U-shaped pins, and cam-members is apparent.

Claims 35, 57, and 58 are rejected under 35 U.S.C. 102(b) as being anticipated by Lin (US Patent 5,376,126).

Lin discloses a system comprising a main plate (10) having a larger thickness than outrigger (40) with connection element (62) connecting them.

Response to Arguments

Applicant's arguments filed June 12th, 2006 have been fully considered but they are not persuasive. Applicant first alleges that Hearn does not disclose an outrigger plate element that is offset from the main plate. The examiner would like to explain that offset is merely a measure of the distance between two objects in the context of the

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claim. As long as two things do not occupy the same exact location (i.e. if there's any additional space taken up by one and not the other), they can be construed as offset. Further, taking applicant's narrow interpretation as having notable space between, applicant is directed towards Figures 15-17, which clearly allow one to control the space between the two plate portions. Thirdly, before connecting the plate together, they are inherently offset from one another.

Applicant further alleges that the device of Hearn is not flexible. As previously described, any material can be flexed or bent under certain circumstances. Applicant's own device when using a polymer is to be heated and then deformed. Further, the term flexible is relative. The same device sized for an elephant would appear "rigid" compared to a "flexible" plate sized a mouse.

In regard to Lin, applicant alleges that it is not capable of treatment of bone fractures. One of ordinary skill would readily see that the device of Lin is inherently capable of providing support to bone fractures aligned along the longitudinal axis of the femur. It would supply compression across the fracture line.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

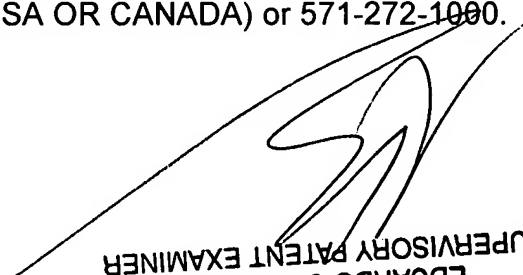
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard R. Shaffer whose telephone number is 571-272-8683. The examiner can normally be reached on Monday-Friday (7am-5pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Richard Shaffer
August 21st, 2006



EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER